Supreme Court, U.S.
FILED
SEP 25 1992
OFFICE OF THE CLERK

No. 92-388

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

In Re CONTINENTAL STEEL CORPORATION, f/k/a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC., Debtor,

LEWIS R. ANDERSON, I.D. BREEDEN, SR., PHIL KAUBLE and WADE KAUBLE,
Petitioners,

v.

PAUL T. DEIGNAN, JOHN WOOD, BAMBERGER & FEIBLEMAN, WILLIAM P. WOODEN, JOHN D. NELL, and WOODEN McLAUGHLIN & STERNER,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

William P. Wooden *
Katherine L. Shelby
WOODEN McLAUGHLIN & STERNER
201 North Illinois Street, Suite 1600
Indianapolis, IN 46204
(317) 639-6151

Attorneys for Respondents

* Counsel of Record

BEST AVAILABLE COPY

No. 92-388

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

In Re CONTINENTAL STEEL CORPORATION, f/k/a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC., Debtor,

LEWIS R. ANDERSON, I.D. BREEDEN, SR., PHIL KAUBLE and WADE KAUBLE,
Petitioners,

v.

PAUL T. DEIGNAN, JOHN WOOD, BAMBERGER & FEIBLEMAN, WILLIAM P. WOODEN, JOHN D. NELL, and WOODEN McLAUGHLIN & STERNER,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

William P. Wooden *
Katherine L. Shelby
WOODEN McLAUGHLIN & STERNER
201 North Illinois Street, Suite 1600
Indianapolis, IN 46204
(317) 639-6151

Attorneys for Respondents

* Counsel of Record

QUESTIONS PRESENTED

1. Should the Petition be granted to review the holding of the Court of Appeals that Petitioners, who filed a request for disciplinary action against Respondents in the Bankruptcy Court, lacked standing to appeal the Bankruptcy Court's finding that there was no fraudulent behavior by Respondents that warranted referral to the Indiana Disciplinary Commission for investigation?

2. Should the Petition be granted to review the holding of the Court of Appeals that the District Court correctly found that Petitioners' appeal from the Bankruptcy Court's finding of no fraudulent behavior which warranted investigation by the Indiana Disciplinary Commission is moot because Petitioners had filed the same allegations of misconduct directly

with the Indiana Disciplinary Commission, which, on April 4, 1991, found those charges to be without merit?

3. Should the Petition be granted to review the District Court's holding that the Bankruptcy Court did not abuse its discretion by failing to appoint the Indiana Disciplinary Commission to investigate allegations of fraudulent behavior which allegedly occurred in a proceeding before it?

4. Should the Petition be granted to review the merits of Petitioners' claims when Petitioners have admitted, on appeal, that Bamberger & Feibleman did not represent them individually, which was the basis for their Report of Misconduct?

LIST OF PARTIES

Pursuant to Rule 24.1(b), 24.2, the parties to the proceeding in the Court of Appeals are:

Appellants:

Lewis R. Anderson, I.D. Breeden, Sr., Philip L. Kauble, and Wade E. Kauble

Appellees:

Paul Deignan, Esq., John Wood, Esq., Bamberger & Feibleman, William P. Wooden, Esq., John D. Nell, Esq., and Wooden McLaughlin & Sterner

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i

LIST OF PARTIES..... iii

TABLE OF CONTENTS..... iv

TABLE OF AUTHORITIES..... vii

OPINIONS BELOW..... 1

COUNTERSTATEMENT OF THE CASE..... 2

SUMMARY OF ARGUMENT..... 24

REASONS FOR DENYING THE PETITION.... 26

I. PETITIONERS LACK STANDING TO APPEAL BANKRUPTCY COURT'S DECISION ON THEIR ALLEGATIONS OF MISCONDUCT.. 26

II. DISCIPLINARY COMMISSION'S INVESTIGATION OF SAME MISCONDUCT ALLEGATIONS FILED WITH IT BY PETITIONERS RENDERS APPEAL MOOT..... 34

III. BANKRUPTCY COURT HAS JURISDICTION TO DETERMINE WHETHER TO DISCIPLINE ATTORNEYS..... 40

IV. DISTRICT COURT PROPERLY FOUND NO ABUSE OF DISCRETION.... 42

A. Petitioners Have Abandoned Basis For Report Of Misconduct..... 42

B. Bankruptcy Court's Findings Of No Fraudulent Behavior Not Clearly Erroneous..... 44

CONCLUSION..... 56

APPENDIX

"Plaintiffs' Verified Report to the Court of Egregrious Attorney Misconduct by William P. Wooden, Esq. John D. Nell, Esq., The Law Firm of Wooden, McLaughlin & Sterner and Pault T. Deignan, Esq., John Wood, the Law Firm of Bamberger & Feibleman"..... A-1

"Order Dismissing Employees and Their Claims with Prejudice," dated October 6, 1989, in the United States Bankruptcy Court, Case No. IP85-5415V, Adversary Proceeding No. 0593.. A-22

"Judgment" dated September 30, 1991, United States District Court, Southern District of Indiana, Cause No. IP 91-363-C..... A-31

"Order" dated July 10, 1992, the United States Court of Appeals for the Seventh Circuit, Cause No. 91 C 362.... A-33

"Letter" from Thomas F. Strubbe, Clerk, United States Court of Appeals for the Seventh Circuit, to Mark Garringer, Esq., dated July 24, 1992, regarding Case No. 91-3387..... A-38

Order dated August 7, 1992, United States Court of Appeals for the Seventh Circuit, Cause No. 91 C 362..... A-40

"Order" dated September 18, 1992, United States Court of Appeals for the Seventh Circuit, Cause No. 91 C 362..... A-41

TABLE OF AUTHORITIES

Abrams v. Seneci,
817 F.2d 1015 (2nd Cir. 1987)..... 39

Allied Chemical v.
Pittsburgh Plate Glass Co.,
404 U.S. 157 (1971)..... 46,
47, 48

Baker v. Carr,
369 U.S. 186 (1962)..... 30

Flast v. Cohen,
392 U.S. 83 (1968)..... 29,
30

In Re Braniff Airways, Inc.,
33 B.R. 1 (N.D. Tex. 1983)..... 48

In Re Echeles,
430 F.2d 347 (7th Cir. 1970)..... 26

In Re Teitelbaum,
253 F.2d 1 (7th Cir. 1958)..... 27

Local 368, AFL-CIO v.
Western Electric Co.,
359 F. Supp. 651 (D.N.J. 1973)..... 49

Lowe v. Duckworth,
663 F.2d 42 (7th Cir. 1981)..... 39

Mattice v. Meyer,
353 F.2d 316 (8th Cir. 1965)..... 27,
28

People of State of New York
by Abrams v. Seneci,
817 F.2d 1015 (2nd Cir. 1987)..... 39

Ramos Colon v. United States Attorney,
576 F.2d 1 (1st Cir. 1978)..... 27, 41

S. v. D.,
410 U.S. 614 (1973)..... 29, 31, 32

Sierra Club v. Morton,
405 U.S. 727 (1972)..... 29, 31

Swanson v. West Publishing Co.,
869 F.2d 1104 (8th Cir. 1989)..... 39

USWA v. Canron, Inc.,
580 F.2d 77 (3rd Cir. 1978)..... 48, 49

OPINIONS BELOW

Lewis R. Anderson, I.D. Breeden, Sr., Philip L. Kauble, and Wade E. Kauble (hereinafer "Petitioners") have not included within their Appendix (hereinafter referred to as "Pet. App.") all of the entries below.

They have not included the Judgment of the United States District Court for the Southern District of Indiana entered September 30, 1991, which Judgment is contained in Respondents' Appendix (hereinafter referred to as "Res. App."), p. A-31.

Petitioners have alsc failed to include the Order of the United States Court of Appeals for the Seventh Circuit entered July 10, 1992, upon Appellees' Motion for Sanctions pursuant to Appellate Rule 38, Res. App., p. A-33, and the Entry of August 7, 1992, of the United States Court of

Appeals for the Seventh Circuit denying Petitioners' "Motion to Recall Mandate and Motion for Leave to File Motion [For Rehearing En Banc] Instanter," Res. App., p. A-40. On September 18, 1992, the Court of Appeals awarded sanctions in the amount of $1,000.00 plus costs of the appeal, and taxed those sanctions against Petitioners' counsel, Mark Garringer. Res. App. p. A-42.

COUNTERSTATEMENT OF THE CASE

This proceeding was commenced on January 8, 1991, by Lewis Anderson, I.D. Breeden, Phil Kauble and Wade Kauble ("Petitioners") filing their "Verified Report to the Court of Egregious Attorney Misconduct by William P. Wooden, Esq., John D. Nell, Esq., Wooden McLaughlin & Sterner and Paul T. Deignan, Esq., John Wood and the Law Firm of Bamberger & Feibleman

and Motion to Appoint Counsel" ("Report of Misconduct") in the bankruptcy case of Continental Steel Corporation ("CSC"), pending before Judge Vandivier in the United States Bankruptcy Court, Southern District of Indiana, Indianapolis Division, Bankruptcy No. IP85-5415-RWV-7. Res. App., p. A-1.

In their Report of Misconduct, Petitioners requested the Bankruptcy Court to refer their allegations of misconduct to the Indiana Supreme Court Disciplinary Commission ("Disciplinary Commission") for investigation pursuant to Rule V of the Rules of Disciplinary Enforcement of the United States District Court for the Southern District of Indiana.

Petitioners' Report of Misconduct, filed in the general bankruptcy case of CSC, a large steel manufacturer with plants in Kokomo, Indiana, and Joliet,

Illinois, alleged misconduct on the part of Paul Deignan, John Wood and Bamberger & Feibleman (hereinafter jointly referred to as "B&F"), counsel for the United Steelworkers of America. The United Steelworkers of America ("USWA") (Locals 1054 and 3601) was the official collective bargaining agent for the Union employees at the Kokomo plant of CSC where Petitioners had been employed. R. 218.

The main theme of the allegations in Petitioners' Report of Misconduct was that B&F: (1) represented Petitioners in the CSC bankruptcy and rendered their claims therein to money without notice to, knowledge of, or consent of Petitioners; (2) was without any legal authority to represent Petitioners; (3) rendered Petitioners' wage claims to money which was unaccounted for; and (4) participated

in the liquidation of the assets of CSC's Pension Plan A and the $40 million funding of that Pension Plan was unaccounted for. Res. App., pp. A-1-16. As to their allegations in their Report of Misconduct against William P. Wooden, John D. Nell, and Wooden McLaughlin & Sterner (hereinafter jointly referred to as "WMS"), Petitioners argued that WMS was guilty of fraud for asserting the factual and legal position of its client, B&F, that B&F did not represent Petitioners individvually but, instead represented the USWA and a subclass. Res. App., pp. A-6-8.

Petitioners' allegations of misconduct by B&F relate to two major proceedings of the CSC bankruptcy: (1) the Pension Plan litigation; and (2) the adjudication of the mechanic's and corporate employee liens asserted

against CSC's assets by the members and retired former members of USWA.

The Continental Steel Corporation 1950 Employee Pension Plan A ("Pension Plan A") was established and maintained pursuant to a collective bargaining agreement between CSC and USWA. R. 146-213. CSC was the Administrator of the Plan, R. 190, which was guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"). R. 145A.

In the United States District Court, the PBGC filed an application for termination of Pension Plan A as of February 14, 1986, and for the appointment of PBGC as the Statutory Trustee of the Plan. R. 145. The USWA (by its counsel, B&F), as the official bargaining agent for Locals 1054 and 3601 who negotiated and obtained Pension Plan A, moved to intervene generally as a defendant in the PBGC's

action to terminate Pension Plan A. R. p. 218. PBGC's action to terminate Pension Plan A was transferred to the Bankruptcy Court, where it proceeded as Adversary Proceeding 86-141 ("AP 86-141").

On March 6, 1986, the Bankruptcy Court approved an Agreed Entry among the PBGC, USWA, and the Bankruptcy Trustee for the Estate of CSC to terminate Pension Plan A and to appoint PBGC as the Statutory Trustee, while reserving the determination of a termination date of Pension Plan A until a later date. R. 222. Pursuant to that Agreed Entry, all documents and all assets funding Pension Plan A held by the Trustee or State Street Bank & Trust Company were turned over to the PBGC. Id.

The PBGC had requested a termination date of February 14, 1986,

which was prior to plant shutdown. R. 145A. If the PBGC prevailed, then shut-down benefits under the Plan would not be guaranteed and paid by PBGC. After lengthy negotiations, the PBGC, the Trustee and the USWA, agreed that the plan termination date would be February 25, 1986, and that plant shutdown would be considered to have taken place on or before February 24, 1986, R. 279-80, making shutdown benefits for eligible employees guaranteed by the PBGC.[1]

On February 1, 1988, about the time the PBGC, the Trustee and the USWA had agreed upon a termination date prior to plant shut down, the law firms of Hopkins & Sutter and Noel & Noel moved

---

[1] In other words, as the Bankruptcy Court ruled in dismissing the Report of Misconduct, the former employees, including Petitioners, won. Pet. App., p. 72.

to intervene in AP 86-141 on behalf of certain Plan participants, including Petitioners (except Breeden). R. 225. The USWA objected to the Motion for Leave to Intervene because the USWA, which was the official bargaining agent under the collective bargaining agreement (including Pension Plan A) had concluded the proposed Settlement Agreement regarding the termination date of Pension Plan A with the Trustee and PBGC. R. 276. That proposed Settlement Agreement had been filed with the Court and a hearing set on March 10, 1988. R. 279. On March 10, 1988, Hopkins & Sutter and Noel & Noel withdrew their Motion to Intervene.

In their Statement Of The Case, Petitioners have mislead the Court about the proceedings by which the mechanic's and corporate employee liens claims by the members and retired

former members of USWA were adjudicated. By omitting a discussion of relevant proceedings, Petitioners seek the Court to believe that their claims were adjudicated without any notice to them. See Petitioners' Brief, pp. 5-7. That is not true. The mechanic's and corporate employee lien claims were adjudicated in a class action, of which Petitioners received notice as members of a certified subclass and in which Petitioners participated. R. 564, 596, 611-12, 634-704, 714-19.

The USWA assisted its members and retired former members in asserting mechanic's and corporate employees' liens on CSC's assets, under Ind. Code 32-8-3 and 32-8-24, for unpaid wages and benefits due under the collective bargaining agreements between CSC and USWA. On November 10, 1986, the USWA

initiated Adversary Proceeding 86-593 ("AP 86-593") to determine the validity, priority and extent of the former employees' liens. R. 431. The amount of the liens asserted by the employees exceeded the assets of the Estate of CSC. R. 706-77. In addition to the claims of the employees, CSC's major claimants were the United States Environmental Protection Agency ("EPA"), the Indiana Department of Environmental Management ("IDEM") and the PBGC. Id.

After the assertion of the former employees' liens and the filing of the Complaint in AP 86-593, the EPA, IDEM, PBGC, USWA (on behalf of its members and former retired members) and the Trustee entered into settlement negotiations. A proposed global Settlement Agreement of all their claims was reached. On January 28,

1988, the Trustee applied to the Bankruptcy Court in the general bankruptcy (IP 85-5415) for approval and authority to enter into a global Settlement Agreement with the EPA, IDEM, PBGC and former employees of CSC.

In order to bind the former employees to the terms of the Settlement Agreement, on January 29, 1988, the Trustee filed a class action in Adversary Proceeding 88-43 ("AP 88-43") to determine the validity and extent of the employees' liens. R. 564. The defendants in AP 88-43 were Timothy J. Cheek and Glynda J. Crousoure, on behalf of themselves and all former employees of CSC (which included Petitioners). Id. The Trustee requested the Bankruptcy Court to certify the action as a class action, and on February 23, 1988, the Bankruptcy Court entered its Findings

of Fact, Conclusions of Law and Order authorizing the action to proceed as a class action and certifying two subclasses. R. 596.

Timothy Cheek was the representative of one subclass, consisting of former employees of CSC who were members of the collective bargaining units represented by USWA and whose claims were based on previously negotiated collective bargaining agreements. R. 597-98. On February 23, 1988, B&F entered an appearance and filed an Answer on behalf of Mr. Cheek. R. 591, 565.

On February 24, 1988, in AP 88-43, the Bankruptcy Court entered an Order setting a hearing on the proposed settlement of the class action for April 5, 1988. R. 609-10. A written notice was given to all class members informing them that the proposed

Settlement Agreement was available for inspection, that a class had been certified in AP 88-43, that a hearing was to be held on April 5, 1988 in AP 88-43 to determine whether the proposed settlement was fair and reasonable for the former employees, that all objections to whether the settlement was fair and reasonable for former employees were to be filed on or before April 4, 1988, that a hearing was to be held on April 12, 1988, in IP 85-5414 to determine whether the proposed settlement was in the best interests of the Estate of CSC and its creditors generally, and that any objections were to be filed on or before April 7, 1988. R. 611-12. The notices were mailed to all former employees of CSC at their last known addresses on March 16, 1988, and published in six prominent newspapers. R. 616-33.

On April 1, 1988, Breeden, one of the Petitioners herein, filed an Objection to the proposed settlement in IP 85-5415 (instead of AP 88-43), stating that he was objecting on his own behalf and on behalf of others, including Kauble. R. 21-22.

In AP 88-43, a hearing was held on April 5, 1988, to determine whether the settlement was fair and reasonable to the CSC former employees. Transcript of Hearing, R. 634-704. Among those in attendance at the hearing on April 5, 1988, was Breeden, who spoke on the record on his own behalf and on behalf of over 100 union employees. R. 684-89. Breeden objected to the approval of the settlement of his claims, which objection was heard in open court and overruled. Id.

On April 12, 1988, after notice to all creditors including CSC former

employees, the Bankruptcy Court held a hearing in IP 85-5415 on the Trustee's Application for Approval of and for Authority to Enter into Settlement Agreement with EPA, IDEM, PBGC and former employees of CSC.

The Bankruptcy Court entered its Order of April 20, 1988, in AP 88-43, finding that due notice had been given to the former employees of CSC of the proposed settlement and that, notwithstanding Breeden's objection, the settlement was a fair, reasonable and adequate resolution of the asserted claims of the Class. R. 714-19. The Bankruptcy Court, on April 20, 1988, also entered its Findings of Fact, Conclusions of Law and Order in IP 85-5415 approving the settlement. None of the former employees, including Petitioners herein, appealed from those Orders.

On November 13, 1989, the Bankruptcy Court entered its Order approving the distribution of settlement payments to former employees, including Petitioners herein, pursuant to the global Settlement Agreement. R. 43-45

After the approval of the Settlement Agreement in AP 88-43 and in IP 85-5415, the Trustee and USWA filed a Joint Motion to Dismiss the complaint filed in AP 86-593 because the validity and priority of the claims asserted therein had been adjudicated, after notice and hearing, in AP 88-43. R. 481-86. Thus, on October 6, 1989, the Bankruptcy Court dismissed all former employees of CSC and their claims from AP 86-593, "taking note of its own record herein which demonstrates that the claims of former employees have been fully resolved by settlement in

Adversary Proceeding No. 88-43 and that the Agreements approved in the Adversary were also approved after notice and opportunity for hearing in the general bankruptcy proceeding herein." R. 488; Res. App., p. A-24.

On March 28, 1991, Judge Vandivier, the Bankruptcy Judge who had presided over the CSC bankruptcy case for at least five years, entered his "Entry Denying Claimants' Motion to Appoint Counsel on Report of Attorney Misconduct," wherein he found not a "shred of support" for Petitioners' Report of Misconduct and denied Petitioners' Motion to Appoint Counsel. Pet. App. D.

On April 2, 1991, Petitioners filed a Notice of Appeal in the United States District Court for the Southern District of Indiana, appealing Judge Vandivier's ruling on the Report of

Misconduct. Petitioners filed their Brief of Appellants and Appendix in the District Court on July 2, 1991.

On August 5, 1991, Respondents filed their Motion to Dismiss, Brief in support thereof, and the Affidavit of Paul Deignan, requesting the District Court to dismiss Petitioners' appeal because they lacked standing to appeal and the appeal was moot. Respondents argued that Petitioners, as complainants in a disciplinary matter, lacked standing to pursue an appeal of the Bankruptcy Court's finding that their allegations of misconduct lacked any shred of support. Respondents also argued the appeal was moot because Petitioners had already received the relief they had requested in their Report of Misconduct, i.e., an investigation of their allegations of

misconduct by the Disciplinary Commission.

Breeden, Anderson, and Kauble had each filed grievances with the Disciplinary Commission alleging the same allegations of misconduct against B&F that they had stated in their Report of Misconduct to the Bankruptcy Court. Exhibits A-D to the Affidavit of Paul T. Deignan, R. Loose Pleading Vol. 9. Breeden, Anderson, and Kauble's complaints were reviewed by the Disciplinary Commission and were dismissed on April 4, 1991, by the Disciplinary Commission as being without merit. Certification of Records by the Disciplinary Commission Executive Secretary, Exhibit A to Appellees' Brief in Opposition to Strike. R. Loose Pleading Vol. 10.

On September 30, 1991, the District Court found that the Bankruptcy Court

did not abuse its discretion in finding there was no basis for the allegations of misconduct and that the appeal was moot because Petitioners had already brought their allegations of misconduct to the attention of the Disciplinary Commission, which was the relief they requested on appeal.

On June 17, 1992, the Seventh Circuit Court of Appeals dismissed Petitioners' appeal from the District Court's Judgment, finding Petitioners had no standing to appeal. Pet. App., pp. 34-36.

On June 24, 1992, Respondents filed in the Court of Appeals their Motion for Sanctions under Appellate Rule 38. By its Order dated July 10, 1992, the Court of Appeals found that sanctions, in the form of damages against Petitioners' counsel, were appropriate under Appellate Rule 38, because on

appeal Petitioners made no attempt to address the mootness issue, a basis for the District Court's Judgment. Res. App., pp. A-35-36. Also, the Court of Appeals found Petitioners had failed to cite any controlling authority or distinguish the controlling authority cited by Respondents on the standing issue. The Court of Appeals found that Petitioners "wholly ignored the jurisdictional issues squarely raised by their appeal." Res. App., p. A-36.

On July 24, 1992, the Court of Appeals received Petitioners' Petition for Rehearing En Banc, which was returned to Petitioners unfiled because it was untimely. Res. App., p. A-38. On July 31, 1992, Petitioners filed their "Motion to Recall the Mandate and Motion for Leave to File Motion Instanter," which was denied by the

Court of Appeals on August 7, 1992. Res. App., p. A-40.

On September 18, 1992, the Court of Appeals awarded sanctions in the amount of $1,000.00 plus costs of the appeal, and ordered them taxed against Petitioners' counsel, Mr. Garringer.[2]

---

2 Petitioners have also pursued appeals to the Seventh Circuit Court of Appeals from the District Court's denial of their Rule 60(B) Motion in their state court Action for Accounting against B&F they removed to District Court (referred to in Petitioners' Brief at 7) and from the Bankruptcy Court's striking of Mr. Garringer's Appearance filed in AP 86-141 on November 8, 1990. In both of those appeals, the Seventh Circuit Court of Appeals found the appeals to be frivolous and ordered Mr. Garringer to file a brief as to why he should not pay the appellees' costs for appeal. Order of June 4, 1992, In Re Continental Steel Corp.: Appeal of Anderson, et al., No. 91-1416 (7th Cir. June 4, 1992); Order of July 10, 1992, Kauble, et al. v. United Steelworkers of America, et al., No. 91-3368 (7th Cir. July 10, 1992).

SUMMARY OF THE ARGUMENT

Because Petitioners are informants who requested a Bankruptcy Court to discipline attorneys pursuant to its inherent power, they do not have standing to appeal the Bankruptcy Court's refusal to discipline those attorneys.

Petitioners' appeal is moot because they have already filed their allegations of misconduct directly with the Disciplinary Commission which reviewed and dismissed those allegations. Thus, the relief Petitioners requested from the Bankruptcy Court and continue to request here has been granted to them.

The Bankrutpcy Court has inherent jurisdiction to discipline attorneys who practice before it.

Petitioners have conceded that Bamberger & Feibleman did not represent

them individually so that the basis of their Report of Misconduct is admittedly wrong.

Judge Vandivier did not abuse his discretion in finding there were no allegations of misconduct that should be referred to the Disciplinary Commission.

B&F never had control and possession of any funds of the Estate of CSC. B&F's assertion in a pleading that USWA was the exclusive bargaining agent for its members was legally correct and does not warrant discipline.

Petitioners' report of misconduct is another attempt to attack collaterally the Settlement Agreement.

REASONS FOR DENYING THE PETITION

I. PETITIONERS LACK STANDING TO APPEAL BANKRUPTCY COURT'S DECISION ON THEIR ALLEGATIONS OF MISCONDUCT.

The Court of Appeals correctly found that Petitioners, as complainants in a disciplinary matter, do not have standing to appeal from the Bankruptcy Court's refusal to discipline Respondents.

The Court of Appeals followed well-established authority of the Seventh, First and Eighth Circuits that an individual who reports alleged misconduct by an attorney to a court has no standing to appeal the court's decision not to discipline the attorney. See In Re Echeles, 430 F.2d 347, 350 (7th Cir. 1970)(United States Attorney had standing to appeal only because three-judge Executive Committee of District Court gave him authorization to do so); In Re

Teitelbaum, 253 F.2d 1, 2 (7th Cir. 1958)(United States Attorney who had filed a petition for the disbarment of another attorney lacked standing to appeal the district court's denial of the petition); Ramos Colon v. United States Attorney, 576 F.2d 1, 5-6 (1st Cir. 1978)(A criminal defendant who requested the district court to conduct a hearing on allegations that the prosecutor had acted in bad faith in prosecuting Colon for his political beliefs lacked standing to pursue and appeal from the district court's rejection of his allegations); Mattice v. Meyer, 353 F.2d 316, 319 (8th Cir. 1965)(Private citizens cannot appeal a district court's denial of their request for disciplinary action against an attorney).

As the Eighth Circuit found in Mattice, a request for disciplinary

action does not initiate an action, either civil or criminal, but rather "invokes the inherent power of the courts to maintain the integrity of the bar." 353 F.2d at 319. Neither the Federal Rules of Civil Procedure nor the Rules of the United States District Court were found by the Eighth Circuit Court of Appeals in Mattice to authorize an individual to maintain a disbarment action against a lawyer. Rather, the private citizen acts as an informer:

> An individual may, acting as an informer, make available to the district court pertinent information bearing upon the qualifications or professional conduct of a member of the federal bar. Beyond that point the individual may not exercise control over the proceedings. Further action, if any, becomes the responsibility of the court.

Id.

Petitioners have completely ignored this clear authority, in the District Court, in the Court of Appeals and here. They have failed to distinguish, or even discuss, any of the cases relied upon by the Court of Appeals. Rather, Petitioners argue the standing issue as if they had brought a claim for damages against Respondents for monies they claim are owed to them by Respondents.

Petitioners incorrectly focus upon the question of whether they have standing to raise the issue of where the money for their claims allegedly went, citing Flast v. Cohen, 392 U.S. 83 (1968) and S. v. D., 410 U.S. 614 (1973), and whether they have suffered a "palpable economic injury," citing Sierra Club v. Morton, 405 U.S. 727 (1972). Petitioners are evidently still confused about the issue of

standing. The standing question here is whether they have a right to mandate the Bankruptcy Court to discipline attorneys based upon allegations they filed with the Bankruptcy Court. The Local Rules pursuant to which Petitioners filed their Report of Misconduct do not create any cause of action to which they are a party; rather, those Rules establish a procedure the court follows in the exercise of its inherent right to oversee the integrity of the conduct of its officers.

None of the cases cited by Petitioners support reversal of the Court of Appeals' opinion. Baker v. Carr, 369 U.S. 186 (1962), addressed the issue of standing in a case involving the challenge of the constitutionality of a state statute. Flast v. Cohen, 392 U.S. 83 (1968),

addressed the issue of standing in a taxpayer's lawsuit challenging the expenditures of federal funds as being unconstitutional. Sierra Club v. Morton, 405 U.S. 727 (1972), addressed the issue of standing in an action to restrain officials from approving a skiing development in a national game refuge and forest. None of these cases involve the question of whether private individuals who report alleged misconduct to a court can appeal from the court's refusal to discipline attorneys.

S. v. D., 410 U.S. 614 (1973) supports the Court of Appeals' conclusion that an informant in a disciplinary action does not have standing to appeal a court's refusal to discipline another attorney. As the Court found in S. v. D., in a case analogous to that herein, "a private citizen lacks a judicially cognizable

interest in the prosecution or non-prosecution of another." 410 U.S. at 619. Thus S. v. D. is not contrary to the Court of Appeals' opinion herein.

Because a disciplinary action involves a court's exercise of its power to maintain the integrity of the court, an individual who makes allegations of misconduct to the court clearly does not have a personal stake in the outcome of the controversy.

Petitioners repeatedly argue they have a right to know where their claims rendered to money went.[3] Indeed,

---

3 The Bankruptcy Court correctly found, and the Record shows, that Petitioners were well aware their claims had been adjudicated in the class action in AP 88-43, of which they received notice and in which they participated. Respondents pointed out below that Petitioners were well aware that settlement funds have been paid pursuant to the terms of the Settlement Agreement and that Petitioners had received some of those funds.

they have several courses of action available to them to answer that question. They could bring an action against B&F to recover any monies allegedly held by B&F.[4] They could bring an action against the trustees of the Union Employee Discretionary Trust Fund for an accounting as to any claims they have against the fund. In such actions they would have standing. However, as complainants who brought allegations of misconduct to the attention of the Bankruptcy Court, Petitioners lack standing to appeal the Bankruptcy Court's decision.

---

4 As the Record shows without dispute, B&F never had any possession and control of any funds of the Estate of CSC. R. 132. Further, Petitioners have sued B&F for alleged attorney malpractice and that action is pending in the Marion County, Indiana Superior Court No. 1. R. 103AAAAAA.

II. DISCIPLINARY COMMISSION'S INVESTIGATION OF SAME MISCONDUCT ALLEGATIONS FILED WITH IT BY PETITIONERS RENDERS APPEAL MOOT.

The Petition also should not be granted because Petitioners' appeal is moot. As the District Court correctly found,[5] Petitioners filed the same allegations of misconduct directly with the Disciplinary Commission that they reported to the Bankruptcy Court in their Report of Misconduct. Petitioners' complaints of misconduct were filed with the Disciplinary Commission by Breeden on June 22, 1988, by Anderson on March 13, 1989, and by

---

5 Respondents argued both in the District Court and in the Court of Appeals that Petitioners' appeal was moot. The District Court agreed. In granting Respondents' Motion for Sanctions under Appellate Rule 38, the Court of Appeals found Petitioners made no attempt to address this issue on appeal.

Kauble on June 22, 1988 and September 13, 1990. See Exhibits A-D to Affidavit of Paul T. Deignan, R., Loose Pleading Vol 9. Those complaints were reviewed by the Disciplinary Commission and dismissed on April 4, 1991, because they were without merit.

Petitioners have never disputed that their allegations filed with the Disciplinary Commission were the same as their allegations in their Report of Misconduct. Indeed, a review of those complaints shows the same arguments presented in their Petitioners' Brief here (and in their Verified Report) were presented to the Disciplinary Commission.

For instance, in the complaint of June 22, 1988, filed by Kauble and Breeden, they contended that the USWA had no right to represent retirees and had no valid consent forms (i.e. powers

of attorney) until May 12, 1987. Deignan's Aff., Exh. A, R., Loose Pleading Vol. 9. They contended B&F represented the individuals who had filed lien claims for two years and then transformed those claims into a class action "without knowledge or consent" of the individuals. Id.

In his March 13, 1989 Complaint, Anderson contended that because he was no longer a member of the USWA, as of the date when CSC ceased to exist, the USWA was not a legal representative under the collective bargaining agreement or federal labor law and had no right to represent the interests of its former members. Deignan's Aff., Exh. C, R., Loose Pleading Vol. 9.

Kauble stated in his Complaint that B&F settled claims and possessed property of the retirees and early retirees, including Kauble, who were

represented as individuals by B&F. Deignan's Aff., Exh. D, (¶ 10), R., Loose Pleading Vol. 9. Kauble stated B&F was the legal representative of the subclass of claimants on February 23, 1988, wherein their claims were rendered to money "in complete concealment" to the claimants and after the local union had ceased to exist on that date. (¶¶ 23-24). Kauble argued the USWA, who had never filed a proof of claim as a creditor in the CSC bankruptcy, had no authority to represent the retirees. (¶¶ 12-13, 16). Kauble argued that B&F had no legal authority to represent him and others similarly situated, (¶¶ 10-11), that he was not informed of the settlement until after the fairness hearing on April 5, 1988, (¶ 7), and that his counsel (B&F) did not meet its duties of disclosure. (p. 19).

Petitioners have thus already presented to the Disciplinary Commission their position that B&F represented them individually in AP 86-141 and AP 88-43, without their consent or knowledge. They have further informed the Disciplinary Commission that if B&F was counsel for the USWA which represented their interests, the USWA had no right to represent Petitioners because they were retirees and former employees of CSC.

In their appeal to the District Court, the Court of Appeals, and now in their Petition for Writ of Certorari, Petitioners seek an appellate court to order the Bankruptcy Court to refer the same allegations of misconduct to the same place, the Disciplinary Commission, for investigation. Because Petitioners have already received the relief that they request, i.e., an

investigation of their allegations of misconduct by the Disciplinary Commission, their appeal is moot and the Petition for Writ of Certiorari should not be granted.

It is well-established that if during the pendency of an appeal an appellant obtains the relief which he or she seeks, the case must be dismissed as moot. Swanson v. West Publishing Co., 869 F.2d 1104 (8th Cir. 1989); People of State of New York by Abrams v. Seneci, 817 F.2d 1015 (2nd Cir. 1987); Lowe v. Duckworth, 663 F.2d 42 (7th Cir. 1981). Because Petitioners filed complaints for disciplinary action with the Disciplinary Commission in 1988-1990, which complaints contained the same allegations of misconduct contained in the Report of Misconduct filed with the

Bankruptcy Court,[6] and the Disciplinary Commission ruled, on April 4, 1991, upon those complaints, Petitioners' appeal is moot, and the Petition for Writ of Certiorari should not be granted.

III. BANKRUPTCY COURT HAS JURISDICTION TO DETERMINE WHETHER TO DISCIPLINE ATTORNEYS.

Petitioners erroneously argue the Bankruptcy Court lacks jurisdiction to determine whether allegations of

---

6 The Report alleged WMS was guilty of misconduct in filing an Answer for its client, defendant B&F, in the Clinton Circuit Court asserting B&F's position that B&F did not represent Petitioners individually. Because the allegations of whether B&F represented Petitioners individually were contained in the complaints filed with the Disciplinary Commission by Respondents, the question of whether WMS' assertion of B&F's position that B&F did not represent Petitioners individually has already been reviewed by the Disciplinary Commission.

attorney misconduct lack any shred of support.[7] Petitioners' Brief at 19-21. Courts have the "inherent power" to sanction attorneys who practice before them. Ramos Colon v. U.S. Attorney for District of Puerto Rico, 576 F.2d 1, 3 (1st Cir. 1978).

Petitioners' argument that the Bankruptcy Court lacked jurisidiction because it is not an Article III Court, Petitioners' Brief at 20-21, need not be addressed because Petitioners did not raise that argument in the District Court or Court of Appeals. When they appealed to the District Court, they

---

7 If Petitioners believe the Bankruptcy Court lacked jurisdiction to make a determination of their allegations of misconduct, one wonders why they ever bothered to file them, especially in light of Petitioners' statement that "Anderson is not requesting the 'adjudication' of a particular issue from the bankruptcy court." Petitioners' Brief at 23.

did not argue that the District Court as an Article III Court, and not the Bankruptcy Court, had jurisdiction to make a determination on their allegations. They asked the District Court to review the Bankruptcy Court's decision to determine if it was an abuse of discretion.

The District Court reviewed the Bankruptcy Court's Order and found that the "Bankruptcy Court's factual findings of no fraudulent behavior [are] not clearly erroneous" and that the Bankruptcy Court's ruling was not an abuse of discretion. Pet. App., pp. 53-54.

Petitioners have shown no reason to grant their Petition.

IV. DISTRICT COURT PROPERLY FOUND NO ABUSE OF DISCRETION.

A. Petitioners Have Abandoned Basis For Report Of Misconduct.

Petitioners alleged in their Report of Misconduct, and argued in the

District Court, that B&F represented them individually in the CSC bankruptcy, without consent of Petitioners and without legal authority, and rendered Petitioners' claims to money, which was allegedly unaccounted for. Res. App., p. A-1. Petitioners argued B&F violated various Rules of Professional Conduct in its representation of them. Id.

Similarly, in their Report of Misconduct, Petitioners argued WMS' filing of an answer in the Clinton Circuit Court, which denied any attorney-client relationship between B&F and Petitioners individually, was a "bald" lie, fraud upon the Clinton Circuit Court, and a RICO violation, done "to perfect the concealment of missing funds." Res. App., pp. A6-8.

However, in the Court of Appeals and here, Petitioners have admitted B&F

did not represent them individually. Thus, they have abandoned the basis for their Report of Misconduct, and the Answer filed by WMS on behalf of B&F was accurate. Because the basis for the Report of Misconduct is now admittedly false, the Court should stop here and deny the Petition.

B. Bankruptcy Court's Findings Of No Fraudulent Behavior Not Clearly Erroneous.

Not only have Petitioners abandoned their argument that B&F represented them individually, but they have also abandoned a number of arguments regarding the fraudulent conduct B&F allegedly engaged in. For instance, as to the Pension Plan funds, Petitioners argued below that $40 million of those funds were unaccounted for and B&F should account for them. The evidence in the Record is undisputed that neither B&F nor WMS ever received, or

was entrusted with those funds, which were turned over to the PBGC! R. 224. Petitioners have now abandoned this argument.

As to those arguments asserted by Petitioners here and in the Report of Misconduct, the Bankruptcy Court properly found they had no basis.

First, the Record does not support Petitioners' allegations that B&F has "rendered [their] claims to money" and failed to account therefor. Petitioners' Brief at 12, 13. Petitioners' mechanic's lien claims and/or corporate employee claims were adjudicated in AP 88-43, after notice to them and an opportunity to be heard. R. 714-19. Orders approving distributions paid under the global Settlement Agreement were entered by the Bankrutpcy Court. R. 43. Moreover, the evidence in the Record is

undisputed that B&F never had any possession and control of any funds of the Estate of CSC. R. 132.

The Bankruptcy Court properly found B&F's legal assertion in a pleading in AP 86-141 that USWA was the exclusive bargaining agent for its members was not conduct warranting discipline. Pet. App., p. 85. The USWA had authority, as the exclusive bargaining agent, to intervene in AP 86-141 and represent its members and former retired members on the issue of the termination date of Pension Plan A.

Petitioners' assertion that the USWA had no authority, as exclusive bargaining agent, to intervene in AP 86-141 is based upon an incorrect interpretation of Allied Chemical v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971).

Allied Chemical does not hold that a union cannot enforce a contract between it and the debtor in bankruptcy. Allied Chemical only holds that retirees are not "employees" within the meaning of the National Labor Relations Act and retiree benefits are not a mandatory subject of collective bargaining. Moreover, the Supreme Court noted that its decision in Allied Chemical did not preclude "permissive bargaining over the benefits of already retired employees." 404 U.S at 171, n. 11.

The USWA intervened in AP 86-141 (before the case was converted) to contest the Pension Plan A termination date requested by the PBGC. Pension Plan A was between CSC and USWA, the official collective bargaining agent. R. 146, 149. As a party to that agreement, USWA had standing to contest

the proposed termination date. See In Re Braniff Airways, Inc., 33 B.R. 1 (N.D. Tex. 1983) (Individual union members have no standing to assert claims based on alleged violations of collective bargaining agreements; the Union had such standing). Further, the Union has standing to sue on behalf of retirees. USWA v. Canron, Inc., 580 F.2d 77 (3rd Cir. 1978). In Canron, the USWA sought arbitration of a dispute with the company over whether the company would continue to provide health and life insurance coverage to retirees. The company, citing Allied Chemical, argued that the USWA lacked standing to sue on behalf of retirees. The Third Circuit Court of Appeals disagreed, stating:

> Even though retirement benefits of former employees already retired are not a mandatory subject of collective bargaining, "it does not

> naturally follow, as the company implies, that a union loses all interest in the fate of its members once they retire." Rosen v. Public Service Electric & Gas Co., 477 F.2d 90, 94 n. 8 (3d Cir. 1973). We therefore hold that the plaintiff-union had standing to represent the retirees in seeking arbitration under its labor contract with Canron.

580 F.2d at 81.

Finally, even if the collective bargaining agreement is terminated, a union still has standing to prosecute claims which arose when the collective bargaining agreement was still in effect. In Local 368, AFL-CIO v. Western Electric Co., 359 F. Supp. 651, 654 (D.N.J. 1973), the Union sued for breach of the collective bargaining agreement when Western Electric improperly laid off eleven workers. On appeal, the court addressed the issue of the Union's standing. The employees were laid off on October 21, 1970, and

the Complaint was filed on November 12, 1970. The collective bargaining agreement expired December 6, 1971, and the Union was decertified as the exclusive bargaining representative of Western Electric's engineering personnel on August 29, 1972. The court held:

> The subsequent expiration of the Agreement, and decertification, do not affect the Union's standing to prosecute claims that arose when the collective bargaining agreement was in effect. John Wiley & Sons v. Livingston, 376 U.S. 543, 84 S.Ct. 909, 11 L.Ed.2d 898 (1964); United States Gypsum Co. v. United Steelworkers of America, 384 F.2d 38, 46 (5th Cir.), cert. denied, 389 U.S. 1042, 88 S.Ct. 783, 19 L.Ed. 832 (1968).

359 F. Supp. at 654.

Thus, Petitioners' argument that the USWA could not seek to enforce its members' liens against the Estate for breaches of provisions of collective bargaining agreements is without

merit. This position is well-grounded legally. It cannot possibly constitute attorney misconduct to have asserted it.

In their Report of Misconduct, Petitioners alleged B&F violated Rule 1.15 of the Rules of Professional Conduct by rendering their claims to money "under the guise and shell of the 'Union Trust Fund'" without accounting therefor. Res. App., p. A-12. They now contend $1,124,000.00 was paid by the Bankruptcy Trustee to the Union Discretionary Trust Fund as of December 1991[8] and that USWA is receiving that amount as fees or compensation. Because this contention was not raised in the Report of Misconduct, it should not be considered now.

---

8 Petitioners do not cite any evidence in the Record for this assertion. They could not because December 1991 is after the rulings by the Bankruptcy Court and District Court.

Moreover, Petitioners' attack upon the procedure for payment of funds by the Bankruptcy Trustee to the Union Employee Discretionary Trust Fund (Petitioners' Brief at 14-15) is nothing more than another collateral attack upon the settlement. So are their arguments that B&F had no powers of attorney for the Pension litigation and that USWA was not the official bargaining agent in the Pension litigation, Petitioners' Brief at 16-17. The Settlement Agreement was approved long ago, as was the Pension Plan termination date. Petitioners were aware of both of those proceedings, participated in AP 88-43 and had personal counsel (Noel & Noel) representing them to make certain the pension payments were correct. R. 225-275, 385. Petitioners should have challenged the Bankruptcy Court's

orders then. It is too late for them to do so now.

Petitioners have attempted, before filing their Report of Misconduct, to attack collaterally the Settlement Agreement on several occasions. For instance, in IP 85-5415, after the Bankruptcy Court entered its Order approving the first distribution under the Settlement Agreement on November 13, 1989, R. 43, Petitioners herein (and others) attempted to appeal from that order of distribution. R. 46. Their appeal was dismissed on July 12, 1990, by Judge Dillin, who found:

> [T]he appellants' objections to the matters decided in Bankruptcy Court do not focus on the logistics of distributing checks in accordance with the Agreement and pertinent schedules. Rather, the appellants express concern with the Settlement Agreement itself, and the issue of whether they

> themselves were represented and treated properly with regard to the formation and confirmation of that Agreement. These are issues which should have been raised at earlier stages in the bankruptcy proceedings; appeals, if any, should have been taken on orders of the Bankruptcy Court regarding the plans themselves.

R. 61.

Thereafter, on August 27, 1990, and August 31, 1990, Petitioners (and others) filed a Rule 60(b) Motion in both IP 85-5415 and AP 88-43 to set aside the October 17, 1989, Order releasing their liens entered in AP 88-43. R. 68, 771. Both of those Rule 60(b) Motions were denied, in part, because they were an attempt to attack collaterally the Settlement Agreement. R. 81, 91. An appeal of the denial of their Rule 60(b) Motion in AP 88-43 was dismissed because it was untimely. R. 803.

Similarly, after the Bankruptcy Court dismissed the employees' claims in AP 86-593 on October 6, 1989, because those claims had been settled in AP 88-43 (R. 487), Petitioners (and others) moved the Court to set aside the Order on June 5, 1990, raising many of the same objections to the settlement they raised in this proceeding. R. 491. Their request was denied, partly because they were seeking to attack collaterally the settlement (R. 505-506), and their appeal therefrom was dismissed because it was not timely filed. R. 557.

Having unsuccessfully attempted to attack the settlement on several occasions, Petitioners again do so in their Report of Misconduct. A report of attorney misconduct cannot serve the office of appeal from the merits of a ruling. The time for appeal from the

orders approving the settlement and establishing the pension termination date has long since expired.

CONCLUSION

The Petition for Writ of Certiorari should be denied, because Petitioners are informants who requested a Bankruptcy Court to discipline attorneys pursuant to its inherent power and do not have standing to appeal the Bankruptcy Court's refusal to discipline those attorneys.

Moreover, the Petition for Writ of Certiorari should be denied because Petitioners, who seek a referral of their allegations filed with the Bankruptcy Court to the Disciplinary Commission, have already filed those allegations of misconduct directly with the Disciplinary Commission which reviewed and dismissed those allegations. Thus the relief

Petitioners requested from the Bankruptcy Court and continued to request in their appeal to the District Court, Court of Appeals and this Court has already been granted to them so that their appeal is moot.

Because Petitioners have now conceded that B&F represented the USWA and the certified subclass and did not represent them individually, the whole premise of the Report of Misconduct is admittedly wrong. The Petition basically seeks to reargue the global settlement agreement approved long ago, and Petitioners have filed their baseless Report of Misconduct to argue the merits of the settlement.

Further, the District Court properly found Judge Vandivier did not abuse his discretion in finding there were no allegations of misconduct that should be referred to the Disciplinary

Commission. Indeed, Petitioners have shown no misconduct on the part of B&F or WMS.

The Petitioners have failed to show any reasons why this Court should review any aspect of the decision of the Court of Appeals. The Petition for Writ of Certiorari should be denied.

Dated: September 28, 1992

Respectfully Submitted,

William P. Wooden*
Katherine L. Shelby

Attorneys for Respondents William P. Wooden, John D. Nell, Wooden McLaughlin & Sterner, Paul T. Deignan, John Wood and Bamberger & Feibleman

WOODEN McLAUGHLIN & STERNER
201 North Illinois Street
1600 Capital Center South
Indianapolis, Indiana 46204
317-639-6151

*Counsel of Record

2052j/tcf

APPENDIX

UNITED STATES BANKRUPTCY
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
CONTINENTAL STEEL	)	
CORPORATION f/k/a	)	
PENN-DIXIE STEEL	)	Bankruptcy Case No.
CORPORATION and	)	IP85-5415-V
PENN-DIXIE	)	
INDUSTRIES, INC.,	)	
Debtor.	)	

PLAINTIFFS' VERIFIED REPORT TO THE COURT OF EGREGIOUS ATTORNEY MISCONDUCT BY WILLIAM P. WOODEN, Esq., JOHN D. NELL, Esq., THE LAW FIRM OF WOODEN, McLAUGHLIN & STERNER AND PAULT T. DEIGNAN, Esq., JOHN WOOD, THE LAW FIRM OF BAMBERGER & FEIBLEMAN
AND
MOTION TO APPOINT COUNSEL

Comes now, Lewis Anderson, I.D. Breeden, Phil Kauble and Wade Kauble (the "Claimants"), by counsel, to report egregious attorney misconduct to the proper authority and move that the U.S. Bankruptcy Court shall appoint counsel pursuant to Rule 5(A) of the Rules of Admission and Discipline of

the U.S. District Court for the Southern District of Indiana, on grounds as follows:

1. That the Claimants are former union employees of the Continental Steel Corporation ("Continental Steel") with wage and employment related benefit claims in this bankruptcy.

2. That Paul T. Deignan, Esq., John Wood, Esq., of the law firm of Bamberger & Feibleman (hereinafter "B&F") filed claims in the Continental Steel bankruptcy, entered Appearances on behalf of Claimants in various adversary proceedings, including Adversary Proceedings 86-141, 86-237 and others, and filed Adversary Complaint in Adversary Proceeding 86-593 on November 10, 1986, to enforce Claimants' claims, all of this done without notice to Claimants, without the knowledge of Claimants, without

consent of Claimants, and without legal authority to represent Claimants.

3. That Bamberger & Feibleman negotiated the wage claims of the Claimants and rendered the wage claims of Claimants and similarly situated persons to the sum certainof Three Million, Five Hundred Thousand Dollars ($3,500,000.00), plus interest, and that this Three Million, Five Hundred Thousand Dollars, plus interest, is now unaccounted for.

4. That the Claimants are participants and beneficiaries of the Continental Steel Corporation 1950 Employee Pension Plan "A" and that with the last reports and verified Statements of Net Assets of the Plan Administrator and Trustee of Pension Plan "A", there was approximately Forty-Million Dollars ($40,000,000.00) in assets funding Pension Plan "A"

solely for the benefit of Plan "A" participants and beneficiaries such as Claimants, and that Pension Benefit Guaranty Corporation and others liquidated the assets funding Pension Plan "A" in Adversary Proceeding 86-141 ("AP 86-141") in this bankruptcy proceeding.

5. That Bamberger & Feibleman entered Appearance in AP 86-141 on behalf of the United Steelworkers of America for the sole purpose of litigating the claims of Claimants in AP 86-141, the sole matter litigated in AP 86-141, without knowledge of Claimants and without consent of Claimants and without any authority whatsoever to do so.

6. Bamberger & Feibleman participated in the liquidation of the assets funding Pension Plan "A" in AP 86-141. The reported Forty-Million

Dollars ($40,000,000.00) funding Pension Plan "A" are now unaccounted for and has apparent sums missing. As a result, vested pensions by virtue of more than twenty years (20) employment at Continental Steel by Claimants have been concealed from Claimants.

7. That the Claimants filed a Complaint in state court action against Bamberger & Feibleman alleging an attorney-client relationship between Claimants and Bamberger & Feibleman based on the aforesaid various appearances and pleadings discovered by Claimants wherein Bamberger & Feibleman represented Claimants, and later, the certification of the class in AP 88-43 wherein Bamberger & Feibleman was counsel for a certified class of which Claimants were members. The Claimants were seeking information and accounting of the Claimants' claims rendered to

money by Bamberger & Feibleman in this bankruptcy proceeding. Said state court action was venued to the Clinton County Circuit Court, Case No. 12C01-9005-CP-198 ("the Clinton County Action").

8. That William P. Wooden, Esq., John Nell, Esq., and the law firm of Wooden, McLaughlin & Sterner entered Appearance for Bamberger & Feibleman in the Clinton County Action, and with documentary material in their hand that Bamberger & Feibleman entered Appearances on behalf of Claimants and rendered Claimants' claims to money, answered the Claimants' Complaint in the Clinton County Action with the bald lie, under penalty of perjury, that there was no attorney-client relationship between Claimants and Bamberger & Feibleman, or duties of attorneys of Bamberger & Feibleman to

account to Claimants for the Claimants' claims rendered to money by Bamberger & Feibleman, with full appreciation of the fact that it was a bald lie for two purposes:

1) To perpetuate a fraud on the Clinton County Circuit Court;

2) To perfect the concealment of missing funds apparent in the rendering of claims to money by Bamberger & Feibleman without knowledge or consent of the true claim-holders.

9. That by virtue of the foregoing facts, Wooden, McLaughlin & Sterner are active and direct participants in an organized pattern of racketeering activity by attorneys (1) to render the claims held by members of the general public to money without knowledge of the true claim-holders, (2) to conceal the money rendered

without the knowledge of the true claim-holders, and then, (3) to conceal the claims of "fees" from the true claim-holders, members of the general public, and the courts, for "services rendered" on behalf of Claimants and the bankrupt estate, all done under the color and authority of licenses to practice law in the State of Indiana.

10. That astounded and amazed by the bald lie, verified under penalty of perjury, told to the Clinton County Circuit Court delineated in paragraph 8, the Claimants moved to remove the Clinton County Action to the U.S. Bankruptcy Court in the Continental Steel bankruptcy wherein the Claimants' claims were rendered to money and concealed from Claimants by attorneys without knowledge or notice to Claimants, and before this Bankruptcy Court in assigned Adversary Proceeding 90-242.

11. That the foregoing facts are allegations that are true and warrant discipline of attorneys since attorneys should not be concealing the facts of Claimants' claims rendered to money and the representation of claims of members of the general public without their knowledge, consent and/or authority, and then, concealing the transactions and money so rendred.

12. That Rule 5(A) of the Rules of Admissions and Discipline of the U.S. District Court for the Southern District of Indiana provides:

RULE V. DISCIPLINARY PROCEEDINGS

> A. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a judge of this court, whether by complaint or otherwise, and the applicable procedure is

> not otherwise mandated by these Rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

13. That B&F violated Rule 1.2(a) and Rule 1.4 of the Rules of Professional Conduct by the failure to communicate to Claimants directly that B&F was representing Claimants' claims indirectly or otherwise and rendering these claims to money, and as to the means by which the claims were pursued directly, indirectly or otherwise.

14. That B&F violated Rule 1.2(a) and Rule 1.4 of the Rules of Professional Conduct by entering into settlements of Claimants' claims without consulting Claimants directly.

15. That B&F violated Rule 1.5(b) of the Rules of Professional Conduct by

the failure to communicate how B&F was being paid for the legal services rendered in this bankruptcy proceeding for rendering Claimants' claims to money, and how B&F was paid indirectly, directly or otherwise.

16. That B&F violated Rule 1.7 of the Rules of Professional Conduct in that B&F represented the United Steelworkers of America (the "USWA") in this bankruptcy proceeding and various adversary proceedings in this bankruptcy, that the interests of the USWA were directly adverse to the Claimants' interests in this bankruptcy, that B&F's representation of Claimants and their claims was materially limited by the representation of the USWA, all done without consultation of the Claimants or consent of Claimants.

17. That B&F violated Rule 1.8(f) of the Rules of Professional Conduct in that B&F accepted compensation for representing Claimants from another, to wit, the USWA, without consulting Claimants and without consent of Claimants.

18. That B&F violated, and is now violating, Rule 1.15 of the Rules of Professional Conduct by the rendering of Claimants' claims to money under the guise and shell of the "Union Trust Fund" and the "Union Medical Claims Committee" in the administration of this bankruptcy without accounting for Claimants' property when asked to do so.

19. That B&F violated Rule 1.16(a) of the Rules of Professional Conduct in that B&F continued to represent Claimants and their interests when B&F was discharged and categorically told not to represent Claimants.

20. That B&F violated Rule 3.3, and is violating Rule 3.3, by false statements of material fact and law made to this Bankruptcy Court.

21. That B&F violated Rule 8.4(c) of the Rules of Professional Conduct by their representations to numerous counsel during the years 1986, 1987 and 1988 that they represented Claimants to interfere and deprive Claimants of their rights to independent counsel and, then, denying that any attorney-client relationship existed between the Claimants and B&F as delineated herein.

22. That B&F violated Rule 8.4(c) of the Rules of Professional Conduct by denying any personal knowledge of any adversary proceeding wherein the Claimants' claims and interests were litigated.

23. That B&F and Wooden, McLaughlin & Sterner violated, and are violating, Rule 8.4(c) and Rule 3.3 of the Rules of Professional Conduct by engaging in a consistent pattern of conduct involving dishonesty, fraud, deceit and misrepresentations by the concealment of the transactions delineated herein, and by the active false statements of law and fact to conceal the dishonesty, frauds and deceits that have occurred herein.

WHEREFORE, Claimants move as follows:

1) That the Bankruptcy Court shall refer this matter to the Indiana Disciplinary Commission of the Indiana Supreme Court for appointment of special counsel and full investigation so that findings of the facts may be reported to this Court and that the truth may be ascertained, as this Court

is required to do so pursuant to Rules of the District Court.

2) Such other and further relief as proper in the premises.

Mark Garringer
Attorney for Claimants
2802 North Delaware Street
Indianapolis, IN 46205
(317)925-4110

VERIFICATION

Comes now the undersigned under penalty of perjury to verify under penalties of perjury that we have read the foregoing very carefully and that each statement is true and correct, and that we have in custody voluminous documentary material that conclusively and constructively proves that the foregoing statements are true and correct, and personal knowledge that the foregoing statements are true and

correct along with the names and addresses of others who will testify that the foregoing statements are true and correct, and that we will cooperate with any tribunal, administrative agency or law enforcement agency in the investigation of this and any related matters.

LEWIS R. ANDERSON	I.D. BREEDEN, SR.
PHIL KAUBLE	WADE KAUBLE

CERTIFICATION OF SERVICE

This is to certify under penalty of perjury that a copy of the foregoing Verified Report to the Court, etc., and Motion To Appoint Counsel has been served upon the parties listed on the attached distribution sheets by first

class, U.S. Mail, postage prepaid on the date of filing same.

_____

Mark Garringer

DISTRIBUTION:

Robert M. Cargill
Charles L. Glerum
CHOATE HALL & STEWART
Exchange Place
53 State Street
Boston, Massachusetts 02109

David Powlen
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Office of the U.S. Attorney
5th Floor, U.S. Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204

David J. Hamernik, CPA
ERNST & YOUNG
3400 One Indiana Square
Indianapolis, Indiana 46204

Daniel E. Johnson
James M. Matthews
BAKER & DANIELS
300 N. Meridian Street
Suite 2700
Indianapolis, Indiana 46204

Louis F. Cohen
K.C. Cohen
COHEN & MALAD
136 North Delaware Street
Suite 300
Indianapolis, Indiana 46206

David H. Kleiman
DANN PECAR NEWMAN
TALESNICK & KLEIMAN
2300 One American Square
Box 82008
Indianapolis, Indiana 46282

N. Wayne Etter
Chamber of Commerce Building
320 North Meridian
Suite 516
Indianapolis, Indiana 46204

Gary L. Hostetler
Hopper & Opperman
707 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

David R. Day
JOHNSON SMITH DENSBORN
WRIGHT & HEATH
1800 INB Tower
One Indiana Square
Indianapolis, Indiana 46204

Charles E. Greer
ICE MILLER DONADIO & RYAN
One American Square
Box 82001
Indianapolis, Indiana 46282

LeRoy M. Lacey
LACEY O'MAHONEY & MAHONEY
518 North Main Street
P.O. Box 805
Kokomo, Indiana 46901

Charles F. Miller, Jr.
STEWART REEDER DUE & MILLER
1000 Circle Tower Building
Indianapolis, Indiana 46204

Edward B. Hopper
BAMBERGER & FEIBLEMAN
500 Union Federal Building
Indianapolis, Indiana 46204

John E. Casper
Attorney at Law
223 East Court Avenue
Winterset, Iowa 50273-0067

Richard J. Swanson
SEGAL & MACEY
445 North Pennsylvania Street
Suite 301
Indianapolis, Indiana 46204

Morton L. Gitter
OTTERBOURG STEINDLER HOUSTON
& ROSEN, P.C.
230 Park Avenue
New York, NY 10169

Frank H. McCulloch
Pension Benefit Guaranty
Corporation
2020 K. Street N.W.
Suite 7200
Washington, DC 20006

Joel M. Gross
Environmental Enforcement Sec.
U.S. Department of Justice
10th & Pennsylvania Avenue N.W.
Washington, DC 20530

Patrick T. Canning
Securities and Exchange
Commission
219 South Dearborn
Suite 1204
Chicago, Illinois 60604

Richard W. Guthrie
Two Market Square Center
Suite 1100
Indianapolis, Indiana 46204

Tonya M. Aretz
Deputy Attorney General
Office of Attorney General
219 State House
Indianapolis, Indiana 46204

Stephen R. Buschmann
BUSCHMANN CARR & SHANKS
1020 Market Tower
Ten West Market Street
Indianapolis, Indiana 46204

Kenneth J. Ferries
Corporation Counsel
City Hall
Kokomo, Indiana 46901

Michael A. Berman
Securities and Exchange
Commission
450 5th Street, N.W.
Washington, DC 20549

Edward L. Goebel, Jr.
Attorney at Law
115 North Pennsylvania
Suite 1260
Indianapolis, Indiana 46204

Fredric S. Singerman
HOPKINS & SUTTER
Three First National Plaza
Chicago, Illinois 60602

Harlan M. Noel
NOEL & NOEL
1921 Lake Shore Drive
Michigan City, Indiana 46321

Paul T. Deignan
BAMBERGER & FEIBLEMAN
500 Union Federal Building
Indianapolis, Indiana 46204

Thomas W. Dressler
SONNENSCHEIN CARLEN NATH &
ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	
	CASE NO. IP85-5415 V
CONTINENTAL STEEL CORPORATION, f/k/a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC.,	
DEBTOR.	
UNITED STEELWORKERS OF AMERICA, AFL-CIO, on behalf of Itself and on behalf of Members and Retired Former Members of Local Unions 2, 1054 and 3601,	ADVERSARY PROCEEDING No. 0593
Plaintiff,	
vs.	
N. WAYNE ETTER, as Trustee for Continental Steel Corporation, Debtor, UNION BANK & TRUST COMPANY, as Indenture Trustee Under City of Kokomo Pollution Control Revenue Bonds, Series 1974 and Series 1975,	

AMERICAN FLETCHER)
NATIONAL BANK AND)
TRUST COMPANY, as)
Indenture Trustee)
Under City of)
Kokomo Pollution)
Control Revenue)
Bonds, Series 1972,)
CITY OF KOKOMO,)
INDIANA, TREASUERE)
OF HOWARD COUNTY,)
INDIANA, MORGAN)
CONSTRUCTION)
COMPANY, STAHL)
WELDING, INC.,)
HANSELL COAL &)
SUPPLY CO., INC.,)
GENERAL)
REFRACTORIES)
CORPORATION, A.P.)
GREEN REFRACTORIES)
COMPANY, HARBISON-)
WALKER REFRACTORIES)
a Division of)
Dresser Industries,)
Inc., WICKES)
LUMBER,a Division)
of Wickes)
Companies, Inc.,)
LANIER PRODUCTS,)
INC., IBM)
CORPORATION, and)
U.S. UTILITIES,INC.)
)
Defendants.)

ORDER DISMISSING EMPLOYEES
AND THEIR CLAIMS WITH PREJUDICE

This matter is before the Court on the joint motion of N. Wayne Etter,

Trustee herein, and United Steelworkers of America, all by counsel, seeking the dismissal of all former employees and their claims from this adversary with prejudice as a result of settlement of said claims in other proceedings within this bankruptcy case, which joint motion is in the following words and figures, to-wit:

(H.I.)

And the Court, being duly advised in the premises, and taking note of its own record herein which demonstrates that the claims of former employees have been fully resolved by settlement in Adversary Proceeding No. 88-43 and that the Agreements approved in the Adversary were also approved after notice and opportunity for hearing in the general bankruptcy proceeding herein, finds that said joint motion should be granted. Accordingly, it is

ORDERED that all former employees of Continental Steel Corporation and any and all claims in relation to compensation and related benefits of said former employees are hereby dismissed from this adversary proceeding with prejudice.

DATED, October 6, 1989.

RICHARD W. VANDIVIER, JUDGE
UNITED STATES BANKRUPTCY COURT

DISTRIBUTION ATTACHED.

DISTRIBUTION:

James Moloy
David H. Kleiman, Esq.
DANN, PECAR, NEWMAN,
TALESNICK & KLEIMAN
One American Square
Box 82008
Indianapolis, IN 46282

Jeffrey L. Hunter
Assistant U.S. Attorney
U.S. Courthouse, Room 274
46 East Ohio Street
Indianapolis, IN 46204

Morton L. Gitter, Esq.
OTTERBOURG, STEINDLER, HOUSTON
& ROSEN, P.C.
230 Park Avenue
New York, NY 10169

Joel Gross
Environmental Enforcement Sec.
U.S. DEPARTMENT OF JUSTICE
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530

Michael A. Berman
Securities Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

David J. Hamernik, CPA
ERNST & YOUNG
3400 One Indiana Square
Indianapolis, IN 46204

Charles E. Greer
ICE, MILLER, DONADIO & RYAN
One American Square, Box 82001
Indianapolis, IN 46282-0002

DISTRIBUTION CONTINUED:

Charles F. Miller, Jr., Esq.
STEWARE, REEDER, DUE & MILLER
1000 Circle Tower Building
Indianapolis, IN 46204

Stephen R. Buschmann
BUSCHMANN, CARR & SHANKS
1015 Merchants Plaza, E. Tower
Indianapolis, IN 46204

Thomas W. Dressler
SONNENSCHEIN, CARLEN, NATH
& ROSENTHAL
8000 Sears Tower
Chicago, IL 60606

Don P. Button, Esq.
518 N. Main Street, #201
Kokomo, IN 46901

John E. Casper
Attorney At Law
223 East Court Avenue
Winterset, IA 50273-0067

Frank H. McCulloch
Deborah West
PENSION BENEFIT GUARANTY CORP.
Legal Department, Suite 7200
2020 K Street N.W.
Washington, D.C. 20006

Patrick T. Canning
Securities Exchange Commission
219 South Dearborn, Suite 1204
Chicago, IL 60604

DISTRIBUTION CONTINUED:

Hon. Deborah J. Daniels
United States Attorney
United States Courthouse
46 E. Ohio Street
Indianapolis, IN 46204

David R. Day
BOSE, McKINNEY & EVANS
2700 First Indiana Plaza
Indianapolis, Indiana 46204

LeRoy M. Lacey
LACEY, O'MAHONEY, MAHONEY,
ANGEL, JESSUP & HILLIGOSS
318 N. Main Street
P.O. Box 805
Kokomo, IN 46901-0805

Gary Lynn Hostetler
HOSTETLER & KOWALIK
707 Merchants Bank Building
11 S. Meridian Street
Indianapolis, IN 46204

James M. Matthews
Daniel E. Johnson
BAKER & DANIELS
810 Fletcher Trust Building
Indianapolis, IN 46204

Richard J. Swanson
SEGAL & MACEY
445 N. Pennsyulvania, #301
Indianapolis, IN 46204

Neil E. Shook
RUBIN & LEVIN
500 Marrott Center
342 Massachusetts Avenue
Indianapolis, IN 46204-2161

DISTRIBUTION CONTINUED:

Robert M. Gargill
Charles L. Gelrum
CHOATE, HALL & STEWART
Exchange Place
53 State Street
Boston, MA 02109

Deborah J. Caruso
DALE, ECKERLE & EKE
900 Keystone Crossing, #400
Indianapolis, IN 46240

Mary Ann Habeeb
Deputy Attorney
STATE OF INDIANA
219 State House
Indianapolis, IN 46204

Paul T. Deignan
BAMBERGER & FEIBLEMAN
500 Union Federal Building
Indianapolis, Indiana 46204

Steven H. Ancel
Henry A. Efroymson
ANCEL & DUNLAP
1770 Market Square Center
Indianapolis, IN 46204

Louis F. Cohen
COHEN, MALAD & HAHN
136 N. Delaware, Suite 300
P.O. Box 627
Indianapolis, IN 46204-0627

A. Thomas Cobb
Attorney at Law
301 Union Federal Building
Indianapolis, IN 46204

DISTRIBUTION CONTINUED:

David M. Powlen
James A. Strain
BARNES & THORNBURG
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, IN 46204

Robert P. Handler
FIDELCOR BUSINESS CREDIT CORP.
332 S. Michigan Avenue
Chicago, IL 60604

Mr. N. Wayne Etter, Trustee
320 N. Meridian Street
Indianapolis, IN 46204

Corporation Counsel
City of Kokomo
City-County Building
100 South Union Street
Kokomo, IN 46901

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LEWIS R. ANDERSON, I.D. BREEDEN, SR., PHILLIP L. KAUBLE, and WADE E. KAUBLE,	)	
Appellants,	)	
vs.	)	IP 91-362-C
WILLIAM P. WOODEN, JOHN D. NELL, WOODEN McLAUGHLIN & STERNER, PAUL T. DIEGNAN, JOHN WOOD, and BAMBERGER & FEIBLEMAN,	)	
Appellees.	)	
In re:	)	
CONTINENTAL STEEL CORPORATION f.k.a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC.,	)	
Debtor.	)	
(Bk. Case No. IP85-5415-V)	)	

JUDGMENT

In accord with this court's entry on September 30th, 1991, in the above named action, JUDGMENT is hereby ENTERED favor of the appellees, and this appeal is dismissed. Each of the parties is to bear its respective costs in this case.

It is so ORDERED this 30th day of September, 1991.

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copy to:

Mark Garringer
2802 North Delaware Street
Indianapolis, Indiana 46205

Katherine L. Shelby
201 North Illinois Street
1600 Capital Center South
Indianapolis, Indiana 46204

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

July 10, 1992

Before

Hon. Joel M. Flaum, Circuit Judge

Hon. Daniel A. Manion, Circuit Judge

Hon. Milton I. Shadur, District Judge*

IN THE MATTER OF; CONTINENTAL STEEL CORPORATION formerly known as Penn Dixie Steel Corporation, formerly known as Penn Dixie Industries, Incorporated,	)	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division
Debtor,	)	91 C 362
No. 91-3387	)	Sara Evans Barker, Judge
APPEAL OF: LEWIS R. ANDERSON, I.D. BREEDEN, Sr., PHIL KAUBLE, et al.	)	

---

* Hon. Milton I. Shadur, District Judge for the Northern District of Illinois, is sitting by designation.

(over)

ORDER

This matter comes before the court for its consideration of the appellees' motion for sanctions pursuant to Rule 38.

Rule 38 sanctions are appropriate if: (1) the appeal is frivolous and (2) sanctions are appropriate. A-Abart Elec. Supply, Inc. v. Emerson Elec. Co., 956 F.2d 1399, 1406 (7th Cir. 1992). We have stated before that an appeal is frivolous when the result is "foreordained by the lack of substance to the appellant[s'] arguments." Mars Steel Corp. v. Continental Bank N.A., 880 F.2d 928, 938 (7th Cir. 1989) (en banc). We also have stated that sanctions are appropriate when an appeal is "prosecuted with no reasonable hope of altering the district court's judgment and for purposes of delay, harassment or sheer

obstinacy." A-Abart Elec. Supply, 956 F.2d at 1407. Furthermore, in considering sanctions, "[t]he standard depends on the work product: neither the lawyer's state of mind nor the preparation behind the appeal matter." Id. at 938.

Applying these standards, we grant the appellees' motion for sanctions pursuant to Rule 38. The district court concluded that the appellants' appeal from the bankruptcy court's decision was both moot and meritless. Nevertheless, on appeal to this court, the appellants made no attempt to address the mootness issue. The appellees argued in the district court as well as in this court that the appellants lacked standing to appeal the bankruptcy court's decision citing Ramos Colon v. United States Attorney, 576 F.2d 1 (1st Cir. 1978); In re

Echeles, 430 F.2d 347 (7th Cir. 1970); Mattice v. Meyer, 353 F.2d 316 (8th Cir. 1965); and In re Teitelbaum, 253 F.2d 1 (7th Cir. 1958). In their brief before this court, however, the appellants failed to cite any controlling authority or distinguish the authority cited by the appellees. When asked to address the standing issue at oral argument, the appellees' [sic] counsel confessed confusion about the issue. In effect, the appellants wholely ignored the jurisdictional issues squarely raised by their appeal. Instead, the appellants' counsel presented a brief citing five cases that supported only general principles of law. With such unresponsive and irrelevant arguments, the appellants could have had no expectation of altering the lower court

judgments. Cf. Williams v. Leach, 938 F.2d 769, 775 (7th Cir. 1991).

In short, Attorney Garringer's performance fell far short of the level of advocacy demanded by this court. Accordingly, damages assessed against appellants' counsel are appropriate under Rule 38. See A-Abart Elec. Supply, 956 F.2d at 1407 (sanctions may be imposed against either an appellant or the appellant's attorney).

THEREFORE, IT IS ORDERED that appellants' counsel shall file a brief within fifteen days of this decision, explaining why he should not pay the appellees' costs for this appeal. See Circuit Rule 38. During the same time period, the appellees should provide this court with a statement of their costs and fees.

UNITED STATES COURT OF APPEALS

SEVENTH CIRCUIT

Thomas F. Strubbe, Clerk
219 South Dearborn Street
Chicago, Illinois 60604
TELEPHONE (312) 435-5850
FTS 387-5350

Date: July 24, 1992

Case No.: 91-3387, InRe: Continental

vs. Apl: Anderson, Lewis

Mark Garringer, Esq.

2802 N. Delaware Street

Indianapolis, IN 46205

Dear Counsel:

Today this office received the enclosed appellant's prtition [sic] for rehearing en banc which is being returned to you unfiled due to the following procedural concern(s):

The petition for rehearing en banc is untimely, FRAP 40(a). Unless otherwise scheduled by order.

Note: Although every attempt is made to keep this checklist current, counsel is advised to consult the Clerk's Office for relevant procedural changes dictated by recent case law.

A COPY OF THIS NOTICE SHOULD ACCOMPANY THE CORRECTED FILING WHEN RESUBMITTED.

COUNSEL IS ALSO ADVISED IT IS THEIR OBLIGATION TO IMMEDIATELY NOTIFY OPPOSING COUNSEL OF THIS FILING REJECTION, AS DUE DATES FOR SUBSEQUENT FILINGS MAY BE AFFECTED.

Sincerely,

THOMAS F. STRUBBE,
CLERK OF THE COURT

By:

_____
Deputy Clerk

(1054-042391)

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

August 7, 1992

By the Court:

IN THE MATTER OF: CONTINENTAL STEEL CORPORATION, formerly known as PENN-DIXIE INDUSTRIES, INCORPORATED, Debtor,	)	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
APPEAL OF: LEWIS R. ANDERSON, I. D. BREEDEN, SR., PHIL KAUBLE, et al.	)	No. 91 C 362 Sarah Evans Barker, Judge.
No. 91-3387	)	

This matter comes before the court for its consideration of the "MOTION TO RECALL THE MANDATE AND MOTION FOR LEAVE TO FILE MOTION INSTANTER" filed herein on 7/31/92, by counsel for the appellants. On consideration thereof,

IT IS ORDERED that said motion is DENIED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 18, 1992

Before

Hon. JOEL M. FLAUM, Circuit Judge

Hon. DANIEL A MANION, Circuit Judge

Hon. MILTON I. SHADUR, District Judge*

IN THE MATTER OF:	]	Appeal from the
	]	United States
CONTINENTAL STEEL	]	District Court
CORPORATION,	]	for the Southern
formerly known as	]	District of
PENN-DIXIE STEEL	]	Indiana,
STEEL CORPORATION,	]	Indianapolis
formerly known as	]	Division.
PENN-DIXIE	]	
INDUSTRIES,	]	No. 91 C 3662
INCORPORATED,	]	Sarah Evans
	]	Barker, Judge.
Debtor,	]	
	]	
APPEAL OF: LEWIS	]	
R. ANDERSON, I.D.	]	
BREEDEN, SR.,	]	
PHIL KAUBLE,	]	
et al.,	]	
	]	
No. 91-3387	]	

ORDER

On July 10, 1992, we ordered attorney Mark Garringer to respond to

our decision to award sanctions under Fed. R. App. P. 38. In that order, we recounted the specific instances where Mr. Garringer's performance fell far short of the level of advocacy demanded by this court.

Mr. Garringer's explanation does not in any way alter our decision to award Rule 38 sanctions. Accordingly, we award sanctions in the amount of $1,000.00 plus costs of the appeal to be taxed against attorney Mark Garringer. Mr. Garringer must pay the sanctions within thirty days of this order.

* Hon. Milton I. Shadur, District Judge for the Northern District of Illinois sitting by designation.